

REMARKS

Applicants wish to thank Examiner Paden for her keen review of the present patent application. As to the amendments presented all amendments are supported, among other places, by the examples as originally filed. Therefore, the amendments are in compliance with 35 USC §132.

I. Rejection Under 35 USC §103

The Examiner has, again, rejected claims 1-17, 21 and 22 under 35 USC §103 as being unpatentable over Van Heteren et al., U.S. Patent No. 5,190,781 (hereinafter '781) in view of Desrosier and further in view of Ross, U.S. Patent No. 5,632,596 (hereinafter '596). The Examiner maintains the rejection for the reasons set forth in the previous Office Action where the Examiner mentioned, in summary, that the '781 reference discloses a process for manufacturing spoonable non-dairy cream. The process set forth in the '781 reference, as summarized by the Examiner, utilizes a premix which is then homogenized to form a dressing for deserts. The Examiner further mentioned in the previous Office Action, that the claimed invention differs from the process described in the '781 reference since the primary reference does not describe an emulsifier or mixer having a rotor and a stator. In an attempt to cure the deficiencies of the '781 reference, however, the Examiner relies on Desrosier for teaching that emulsions may be formed in a homogenizer or in a colloid mill. The Examiner further relies on the '596 reference which describes a rotor-stator assembly. In view of the above, the Examiner continues to believe that the rejection made under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, is directed to a process for making a dressing comprising the steps of:

- (a) combining raw ingredients in a pre-mix tank comprising a means for mixing to form a coarse emulsion, and
- (b) processing the coarse emulsion in one pass through an in-line mixer/emulsifier comprising at least one set of stator and rotor, and a variable speed motor to drive the rotor, wherein the stator and rotor comprise co-axially engageable rings of teeth having a plurality of concentric vanes and concentric wells with generally slanted side walls from each vane to each well and the rotor and stator when engaged are such that the concentric vanes of the stator align with the corresponding concentric wells of the rotor and the concentric vanes of the rotor align with the corresponding concentric wells of the stator with the corresponding generally slanted walls of the stator and rotor aligned and when engaged a gap having an axial opening dimension and a slanted opening dimension defined by each concentric vane and each concentric well and the aligned slanted walls and the gap is adjustable in increments of about 0.015 inches in axial opening dimension

wherein the dressing is mayonnaise or a salad dressing and an oil phase and an emulsifier phase are raw ingredients combined in the pre-mix tank.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, axial opening dimensions, the diameter of the stator and rotor, the rotational speeds of the rotor, the tip speed of the rotor, the throughput of the process, the characteristics of the rings of teeth of the stator and rotor, and the presence of radial channels on the stator and rotor. The process of claim 1 is still further defined in that the raw ingredients can comprise an oil phase, an egg phase, an aqueous phase, a starch paste phase, a sweetener phase, an acidulant phase, optional solids, or combinations thereof. Claims 23 and 24 identify the raw ingredients as being those which can be employed to make a mayonnaise composition comprising from about 65% to about 81% oil, or from about 19% to about 35% oil, or from about 5% to about 6% oil, as well as ingredients for making a salad dressing comprising from about 45% to about 55% oil. Newly filed claims 25-27 define the type of emulsifier and the amounts employed.

Claim 22 is directed to a spoonable or pourable dressing made by the process of claim 1.

In contrast, the '781 reference is directed to spoonable non-dairy creams. The spoonable non-dairy cremes described in the '781 reference are prepared by mixing fat, emulsifier, thickener, buttermilk powder, and water which is, at a later time, homogenized to form a homogenized mixture. The '781 reference does not, even

remotely, teach, suggest, or describe any of the important and critical limitations set forth in the presently claimed invention. Moreover, as correctly noted by the Examiner, the '781 reference does not employ an inline mixer/emulsifier having the stator and rotor as described in the claimed invention. The '781 reference, even further, is not directed to a mayonnaise composition or a salad dressing composition having, among other things, the oil content, egg phase, starch paste phase, sweetener phase and acidulant phase as described in the presently claimed invention. Moreover, nothing in the '781 reference suggest a process whereby an oil phase and an emulsifier phase are first made and then combined in a pre-mix tank to make a coarse emulsion prior to being processed.

The Desrosier reference does not cure any of the vast deficiencies of the primary reference. This is true because the Derosier reference merely mentions that pressure homogenizers can be pumped with emulsion ingredients and that colloid mills can create shear and turbulence in a liquid. The '596 reference only discloses a rotor and stator assembly in an industrial mixer that can be used to blend various materials like adhesives, coatings, cosmetics, foods, pharmaceuticals and plastics. The '596 reference does not, even remotely, suggest mayonnaise or salad dressing production.

The secondary references relied on by the Examiner, in any viable combination with the primary reference, does not result in a combination of references that renders the present invention obvious since the combination relied on by the Examiner fails to disclose a process for making spoonable and pourable dressings with a mixer having at least one stator and rotor as set forth in the presently claimed invention. Moreover, nothing in the references relied on by the Examiner suggests making a mayonnaise composition or a salad dressing composition having a fat content as described in this

invention, particularly, by first making a course emulsion from raw ingredients which include an oil phase and an emulsion phase having, for example, egg.

In view of the above, it is the Applicants' position that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Therefore, Applicants respectfully submit that the obviousness rejection is misplaced and should be withdrawn.

II. Rejection Under 35 USC §103

The Examiner has rejected claims 1-17, 21 and 22 under 35 USC §103 as being unpatentable over Ross, U.S. Patent No. 5,632,596 (hereinafter '596) in view of Desrosier and further in view of Van Heteren et al., U.S. Patent No. 5,190,781 (hereinafter '781). In the rejection, the Examiner mentions, in summary, that the '596 reference discloses the rotor and stator used in the claimed process, but that the '596 reference fails to suggest the use of a pre-mix prior to processing an emulsion into a dressing. Nevertheless, the Examiner attempts to cure the vast deficiencies of the primary reference by relying on the '781 reference which teaches the manufacture of a spoonable non-dairy cream from a pre-mix and Desrosier for showing that emulsions may be formed in a homogenizer or colloid mill. In view of the above, the Examiner believes that the rejection made under 35 USC §103 is proper.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentable distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention, as set forth in independent claim 1, is directed to a specific process for making spoonable and pourable dressing compositions comprising, among other things, the steps of forming a pre-mix of raw ingredients which include an oil phase and an emulsifier phase and subjecting the pre-mix of raw ingredients (i.e., coarse emulsion) to processing in one pass in an in-line mixer/emulsifier having a specific stator and rotor arrangement. The invention of claim 1 is further defined by the dependent claims which claim, among other things, axial opening dimensions, the diameter of the stator and rotor, the rotational speeds of the rotor, the tip speed of the rotor, the throughput of the process, the characteristics of the rings of teeth of the stator and rotor and the presence of radial channels on the stator and rotor. The process of claim 1 is still further defined in that the raw ingredients can comprise an aqueous phase, a starch paste phase, a sweetener phase, an acidulant phase, egg, specific oil levels, optional solids, or combinations thereof.

Again, newly filed dependent claims 23 and 24 identify the raw ingredients as being those which can be employed to make a mayonnaise composition comprising from about 65% to about 81% oil or from about 19% to about 35% oil, or from about 5% to about 6% oil, as well as ingredients for making a salad dressing comprising from about 45% to about 55% oil. Newly filed claims 25 – 27 define the type of emulsifier and the amounts employed.

Claim 22 is directed to a spoonable or pourable dressing made by the process of claim 1.

In contrast, and as already made of record, the '596 reference only discloses a rotor and stator assembly in an industrial mixer. The Desrosier reference merely mentions

that pressure homogenizers can be pumped with emulsion ingredients and that colloid mills can create shear and turbulence in a liquid. The '781 reference, as already made of record, is directed to spoonable non-dairy creams.

The combination of references relied on by the Examiner does not, even remotely, teach, suggest or disclose a process for making spoonable and pourable dressings by first creating a coarse emulsion from raw ingredients which include an oil phase and an emulsion phase wherein such a coarse emulsion is subjected to an in-line mixer/emulsifier for one pass. Nothing in the combination of references relied on by the Examiner suggests that a mayonnaise composition or a salad dressing composition can be made with the specific oil percentages as claimed. Furthermore, nothing in the combination of references relied on by the Examiner suggests that a pre-mix of raw ingredients in the form of a coarse emulsion having, in addition to oil, an egg phase, an aqueous phase, a starch paste phase, a sweetener phase, and an acidulant phase, can be subjected to an in-line mixer/emulsifier in one phase to make a superior salad dressing or mayonnaise composition.

In view of the above, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not described in the combination of references relied on by the Examiner. In view of this, the rejection made under 35 USC §103 is improper and should be withdrawn.

III. Rejection Under 35 USC §103

The Examiner has rejected claims 1 – 24 under 35 USC §103 as being unpatentable over Trainor, U. S. Patent No. 4,423,084 (hereinafter, '084) in view of Ross, U. S.

Patent No. 5,632,596 (hereinafter, '596). In the rejection, the Examiner mentions, in summary, that the '084 reference discloses a method for making a salad dressing wherein the ingredients include starch, acidulant, egg, oil, water and sweetener. The Examiner further mentions that the ingredients set forth in the '084 reference are mixed and then processed in a colloid mill with a rotor and a stator. The Examiner continues by mentioning that the claimed invention differs from the '084 reference in that the '084 reference fails to describe specific apparatus features. Nevertheless, the Examiner relies on the apparatus description of the '596 reference to cure the deficiencies of the '084 reference. In this regard, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above described for at least the following reasons.

As already made of record, this invention, as set forth in amended claim 1, is directed to a superior and specific process for making spoonable and pourable dressing compositions. The process comprises, among other things, the steps of forming a premix of raw ingredients which include an oil phase and an emulser phase and subjecting the premix of raw ingredients (i.e., course emulsion) to processing in one pass in a in-line mixer/emulsifier having a specific rotor and stator arrangement. The dependent claims of this invention set forth, among other things, axial opening dimensions, the diameter of the stator and rotor, the rotational speeds of the rotor, the tip speed of the rotor, the throughput of the process, and the presence of radial channels on the stator and rotor. Even further, independent claim 1 is further defined

in that raw ingredients used can be those employed to make a mayonnaise composition having specific oil amounts as well as a salad dressing composition comprising specific oil amounts. Newly filed claims 25 through 27 define the type of emulsifier and the amounts employed.

In contrast, the '084 reference merely describes a process for making emulsified salad dressings in the absence of freeze-resistant starch. The '084 reference does not teach, suggest, or disclose, for example, the steps of forming a premix of raw ingredients which include an oil phase and an emulsifier phase to make a coarse emulsion to be fed in one pass to an in-line mixer/emulsifier having a specific stator and rotor arrangement, as claimed. Moreover, the '084 reference does not teach the specific oil amounts, additives and emulsifier amounts set forth in the presently claimed invention.

The vast deficiencies of the '084 reference are not cured by the '596 reference since the '596 reference only discloses a rotor and stator assembly in an industrial mixer that can be used to blend various materials like adhesives, coatings, cosmetics, foods, pharmaceuticals and plastics. The '596 reference does not, even remotely, suggest blending mayonnaise and/or salad dressing compositions.

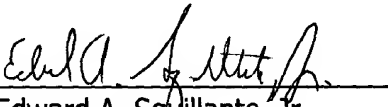
In view of the above, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Therefore, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants respectfully submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, she is kindly invited to contact the undersigned at her earliest convenience.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "**Version With Markings To Show Changes Made.**"

Respectfully submitted,


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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

Please amend claims 1 and 17-20 and add new claims 25-27 as follows:

1. (Amended) A process for making ~~spoonable and pourable~~ dressings ~~dressing~~ comprising the steps of:
 - (c) combining raw ingredients in a pre-mix tank ~~comprising~~ comprising a means for mixing to form a coarse emulsion, and
 - (d) processing the coarse emulsion in one pass through an in-line mixer/emulsifier comprising at least one set of stator and rotor, and a variable speed motor to drive the rotor, wherein the stator and rotor comprise co-axially engageable rings of teeth having a plurality of concentric vanes and concentric wells with generally slanted side walls from each vane to each well and the rotor and stator when engaged are such that the concentric vanes of the stator align with the corresponding concentric wells of the rotor and the concentric vanes of the rotor align with the corresponding concentric wells of the stator with the corresponding generally slanted walls of the stator and rotor aligned and when engaged a gap having an axial opening dimension and slanted opening dimension is defined by each concentric vane and each concentric well and the aligned slanted walls and the gap is adjustable in increments of about 0.015 inches in axial opening dimensionwherein the dressing is mayonnaise or a salad dressing and an oil phase and an emulsifier phase are raw ingredients combined in the pre-mix tank.

17. (Amended) The process of Claim 1 wherein the raw ingredients are further comprised of an oil phase, ~~an egg phase and an aqueous phase.~~
18. (Amended) The process of Claim 1 wherein the raw ingredients are further comprised of an oil phase, ~~an egg phase and a starch paste phase.~~
19. (Amended) The process of Claim 1 wherein the raw ingredients are further comprised of an oil phase, ~~an egg phase,~~ a starch phase, a sweetener phase and an aqueous phase.
20. (Amended) The process of Claim 1 wherein the raw ingredients are further comprised of an aqueous phase, ~~an oil phase,~~ an acidulant phase and, optionally, a solids phase.
25. (New) The process of claim 1 wherein the emulsifier phase comprises egg.
26. (New) The process of claim 25 wherein the dressing comprises from about 2.0% to about 8.0% egg.
27. (New) The process of claim 1 wherein the dressing comprises from about 0.1 to about 0.3% emulsifier.